

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

74-1309

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In the Matter of)	
)	
UNISHOPS, INC.,)	In Proceedings for an Arrangement
)	No. 73-B 1208
)	Docket No. 74-1309
Debtor-Appellant)	

BRIEF OF ACTION INDUSTRIES, INC., APPELLEE

PRELIMINARY STATEMENT

In the bankruptcy proceedings of Unishops, Inc., the Court below on March 4, 1974 affirmed the decision of the Bankruptcy Judge holding, in effect, that the Court does not have summary jurisdiction to restrain a threatened multiplicity of plenary suits in other courts against 13 subsidiary corporations which are not "debtors" or "bankrupts" in any proceedings under the Bankruptcy Act.

The Bankruptcy Judge held that no evidentiary hearing was required, and the District Judge concurred in this conclusion. Unishops, Inc. appealed.

This Court on March 13, 1974 denied the Motion of Action Industries, Inc. (Action) to dismiss the appeal insofar as it

applies to Action's claim against J. Z. Sales Corp., one of the subsidiary corporations. Action's claim against J. Z. Sales Corp., is for the unpaid balance of \$332,448.23 for goods sold and delivered in September, 1973, pursuant to certain writings, copies of which are in the record on appeal and are submitted as an Appendix to this Brief. Those writings conclusively establish that Action's claim against J. Z. Sales Corp. is not colorable nor frivolous, and any summary evidentiary hearing with respect to Action's claim would be superfluous, if not improper.

On the basis of those writings, and the fact that the property of J. Z. Sales Corp. is not before the Court, Action had requested the Bankruptcy Judge in advance of the hearing held February 6, 1974, and the District Court in advance of the hearing held February 26, 1974, to enter an appropriate order determining that the Court has no jurisdiction to enjoin Action from proceeding against J. Z. Sales Corp. Action's Motion to this Court renewed that request. Action now asks this Court to affirm the decision of the District Court in its entirety or, in the alternative, insofar as it applies to Action's claim against J. Z. Sales Corp.

THE UNCONTROVERTED AND DOCUMENTARY FACTS
ON WHICH ACTION RELIES

1. J. Z. Sales Corp. (JZ) is not a "debtor" or "bankrupt" in any proceeding under the Bankruptcy Act, and there is no

averment in Unishops' Application that it owns the property of JZ or that any property of JZ is before or within the jurisdiction of the bankruptcy court.

2. Unishops, Inc. is not a party to any of the writings expressing the agreement made in August, 1973 between JZ and Action, copies of which are in the Appendix to this brief. Only JZ and the Dollar-Ama division of Action are parties to the purchase agreement, the related license to use Dollar-Ama^(R) advertising materials in 21 JZ retail outlets and related terms and conditions of payment.

3. The writings mentioned in paragraph 2 show that the goods bought by JZ from Action were to be delivered in September, 1973 in various specified amounts, ranging between \$12,000 and \$54,000 per store (at retail), direct to each of 21 designated retail outlets of JZ in New York, New Jersey and Connecticut in connection with a licensed Dollar-Ama^(R) promotion simultaneously scheduled for those 21 stores for Monday, October 8, 1973 under a license granted by Action to JZ (not Unishops).

4. On November 29, 1973 (the day before Unishops, Inc. filed its petition under Chapter XI of the Bankruptcy Act), J.Z. Sales Corp. (not Unishops, Inc.) paid Action \$100,000, most of which (\$95,564.40) was on account of Action's charges for the goods sold and delivered to JZ in September, 1973 pursuant to the

arrangements described in paragraphs 2 and 3. This payment was in the form of two checks, each for \$50,000, drawn by JZ on its own separate bank account and signed by Stanley Heller, treasurer of JZ. (Copies of these checks are in the Appendix.)

5. JZ not only has its own separate officers, it also has its own offices (in Plainview, New York, see address on JZ's purchase orders) separate and apart from Unishops' office (in Jersey City, New Jersey, see address on copy of letter annexed to Unishops' Application).

6. Action has not filed a claim against Unishops in these proceedings, nor has Action appeared in the proceedings except to challenge the jurisdiction of the Bankruptcy Court, the District Court and the Court of Appeals to enjoin Action from proceeding, by plenary suit, to effect collection of its claim against J.Z. Sales Corp.

ACTION'S RESPONSE TO THE SO-CALLED
"BASIC FACTS" ON WHICH UNISHOPS RELIES

Unishops' Application to the Court of Appeals refers to its Application dated December 12, 1973 (herein called Unishops' Application) for the "basic facts in support of" its position. Those "facts" not only do not support Unishops' position, they do not apply to Action's claim against J. Z. Sales Corp., as set forth below.

Whether or to what extent Unishops may have operated "on a consolidated basis" prior to filing a petition under Chapter XI

of the Bankruptcy Act, as stated in paragraph 3 of Unishops' Application, is irrelevant, in view of Action's separate dealings with J. Z. Sales Corp., with respect to the retail outlets in New York, New Jersey and Connecticut which Action served, and which were operated by J. Z. Sales Corp., and not by Unishops (for many years both before and after J. Z. Sales Corp. became a subsidiary of Unishops in 1968.)

Unishops' dealings with others than Action, as stated in paragraph 4 of Unishops' Application, are wholly irrelevant--whether they be agreements with banks regarding purchase of inventory after June 1, 1973, or how merchandise was purchased since that date from others, or whether Unishops became liable therefor. From Action's standpoint, the question is not whether Unishops is liable to Action (which would be an appropriate question for the Bankruptcy Court to decide), but rather whether J. Z. Sales Corp. is obligated to pay the balance of \$332,000 still owing to Action for the merchandise which J. Z. Sales Corp. purchased from Action (an issue which can only be decided in a plenary suit against J.Z. Sales Corp.).

That virtually the entire \$52 million in merchandise which was on hand on November 30, 1973 was purchased subsequent to June 1, 1973, as also stated in paragraph 4 of Unishops' Application, has no bearing on Action's claim against J. Z. (It might be noted, in this connection, that virtually none of the

merchandise purchased by J. Z. from Action would have been on hand on November 30, 1973, since the bulk would have been sold and converted into cash by J. Z. in its 21 retail outlets, mostly in the Dollar-Ama ^(R) promotion which began on October 8, 1973.)

The statements in paragraph 5 of Unishops' Application do not apply, being contrary to Action's dealings with J. Z. Sales Corp.

Unishops' Application states that the ordinary course of business "was on a consolidated basis, whereby goods purchased by the debtor (Unishops) were either delivered to the debtor's (Unishops') premises or warehouses for distribution to such subsidiaries...as and when needed, or instructions were given by the debtor (Unishops) to the particular vendor that goods be drop-shipped to a particular location of a subsidiary...as and when needed". The writings in the Appendix to this brief conclusively show that in the arrangements which J. Z. Sales Corp. made with Action for the Dollar-Ama ^(R) promotion in October, 1973 it was J. Z. Sales Corp. and not Unishops, Inc. who purchased the goods from Action, and it was J. Z. Sales Corp. and not Unishops, Inc. who instructed Action to deliver very substantial quantities of merchandise direct to the 21 J. Z. Sales Corp. retail outlets listed in J.Z.'s Purchase Order dated August 16, 1973 and again in the related Dollar-Ama ^(R) trade mark licensing arrangements dated August 22, 1973.

Accordingly, whatever Unishops' position may be, based on its course of dealing with others, as stated in paragraph 6 of Unishops' Application, that position does not apply to the dealings between Action and J. Z. Sales Corp. as outlined above.

The purchase orders which J. Z. Sales Corp. signed do not contain any indication that J. Z. Sales Corp. would not be liable to pay Action the purchase price of the goods covered by the purchase orders. Moreover, it was J. Z. Sales Corp. and not Unishops, Inc. which paid Action \$100,000 on account of Action's charges for the goods, contrary to the statement in paragraph 6 of Unishops' Application that, "consistent with such course of dealing, all trade bills have been and are being paid by the debtor."

ACTION'S RESPONSE TO UNISHOPS' ARGUMENT

The essence of Unishops' contention is that the claims against subsidiaries which Unishops asks the Court to enjoin are held by persons who are creditors of Unishops, but not creditors of the subsidiaries. Unishops does not contend that it owns the property of J. Z. Sales Corp. or that any property of J. Z. Sales Corp. is before or within the jurisdiction of the Court.

The essence of Action's position is that the writings already in the record establish that Action's claim against J. Z. Sales Corp. is not colorable nor frivolous. Since the jurisdiction of the bankruptcy court does not extend beyond such determination (Maule Industries v. Gerstel, 232 F(2d) 294,297), no evidentiary hearing is needed in Action's case.

There can be no doubt that J. Z.'s purchase orders on their face imposed on J. Z. Sales Corp. the usual obligations of a buyer of goods according to the terms of the writings.

The purchase orders and related writings, and the payment of \$100,000 by J. Z. Sales to Action by J.Z.'s own checks (copies of which are in the record) are consistent with the bona fides of Action's claim against J. Z.

Any defense to or avoidance of Action's claim which might be available to J. Z. Sales Corp. would not be a matter for determination in summary proceedings before the Bankruptcy Judge. It would rather be an issue in a plenary suit by Action against J. Z. Sales Corp.

It should be noted that Unishops' position does not encompass claims of all persons against subsidiaries--but rather is limited to claims of vendors of merchandise after June 1, 1973.

Unishops' efforts to defeat Action's right to proceed against J. Z. Sales Corp. rest on an anticipatory undertaking by Unishops to insulate the assets and business of its subsidiaries against the claims of suppliers of merchandise, while at the same time protecting, or creating preferences in favor of, claims of other creditors of subsidiaries, including institutional lenders. ("To give the banks an edge", as stated on page 4 of the opinion of the District Judge.) This was conceded, in essence, in the following statement in the brief submitted by Unishops to the District Judge:

"...appellants and their subsidiaires constructed the mode of dealing with the vendors consistent with their obligations to institutional lenders and intentionally contoured their relations with the trade so as to render the debtor-parent liable, not subsidiaires."

Notwithstanding Unishops' intentions, the writings in the record demonstrate that J. Z. Sales Corp.'s August, 1973 orders to Action were in its own name and not in the name of Unishops. There was no undertaking on Action's part to waive or release its claim against J. Z. Sales Corp. for the purchase price of the goods covered by the orders.

In view of the foregoing, Unishops' scheme should not be permitted to thwart Action's right to its day in court in a plenary suit against J. Z. Sales Corp.

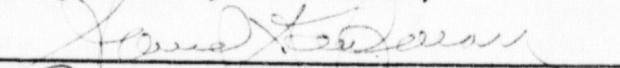
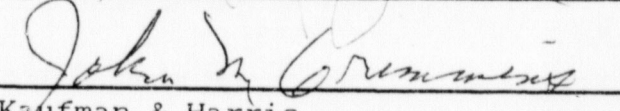
CONCLUSION

Since Action's claim against J. Z. Sales Corp. is not colorable nor frivolous, and the property of J. Z. Sales Corp. is not before or within the jurisdiction of the bankruptcy court, there can be no doubt that the bankruptcy court has no jurisdiction to deprive Action of its day in court in a plenary suit against J. Z. Sales Corp.

Therefore, the order of the District Judge should be affirmed, at least insofar as it applies to the claim of Action Industries, Inc. against J. Z. Sales Corp.

LOCAL COUNSEL
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212-947-2000

Respectfully submitted,



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Pittsburgh, Pennsylvania 15222
412-471-3488

UNITED STATES COURT OF APPEALS
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UNISHOPS, INC.,

Debtor-Appellant

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APPENDIX TO BRIEF OF ACTION INDUSTRIES, INC., APPELLEE

LOCAL COUNSEL
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202-947-2000

KAUFMAN & HARRIS
415 Oliver Building
Pittsburgh, Pennsylvania 15222
412-471-3488

SALES CORP. A SUBSIDIARY OF UNISHOPS, INC.
235 EXPRESS STREET, PLAINVIEW, N.Y. 11803

THE FOLLOWING INSTRUCTIONS MUST
BE ADHERED TO

1. Prepare a separate invoice for each shipment and mail to J. Z. SALES CORP.; 235 Express St., Plainville, N.Y. 11803.
2. INVOICE MUST INDICATE:
STORE NUMBER AND NAME
PURCHASE ORDER NUMBER.
3. Invoice MUST have Original Bill of Lading attached.
4. All shipping containers MUST BE MARKED with:
STORE NUMBER AND NAME
PURCHASE ORDER NUMBER
TOTAL CARTONS.
5. Shipments received after 'cancellation date will be RETURNED AT VENDOR'S EXPENSE WITHOUT NOTIFICATION.
6. Back orders and substitutions will be returned at vendor's expense unless authorized by buyer.
7. Shipments received after the 20th of the month will be deemed received the 1st of the following month.

PURCHASE ORDER NO. 46148

DATE OF ORDER... Aug. 16, 1923

DELIVERY DATE Sept. 21, 1973

CANCELLATION
DATE..... Oct. 8 1972

Net 30 Days DOI
TERMS: 2-10-60-MthDAYS

ADDITIONAL DISCOUNT%

SPECIAL COMMENTS:

FREIGHT INSTRUCTIONS.

ALL SHIPMENTS MUST BE SENT
PREPAID OR SHIPMENT WILL
BE REFUSED

FREIGHT TO BE ABSORBED BY VENDOR

FREIGHT TO BE ADDED TO INVOICE

[illegible][illegible]

	QUANTITY PER STORE	QUANTITY PER STORE	QUANTITY PER STORE	QUANTITY PER STORE	
1	10,000	5,000	100	20,000	1
2					2
3					3
4					4
5					5
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7					7
8					8
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10					10
11					11
12					12
13					13
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15					15
16					16
17					17
18					18

מחלקת המחקר והפיתוח

DO NOT BACK ORDER • NO SUBSTITUTIONS
MDSE. SO SHIPPED WILL BE RETURNED AT VENDOR'S EXPENSE!

Corporate Name	C/O	Address
#101 J.Z. & Son Sales, Inc.	Modell's	Route 17 & Essex Street, Lodi, N.J. 07644
#102 J.Z. East Meadow, Inc.	White's	2000 Hempstead Tpke., East Meadow, N.Y. 11554
#103 J.Z. Commack, Inc.	White's	Jericho Tpke. & Larkfield Rd., Commack, N.Y. 11725
#104 J.Z. Spring Valley, Inc.	White's	Crompond Road, Yorktown Heights, N.Y.
#107 J.Z. Massapequa, Inc.	White's	5500 Sunrise Highway, Massapequa, N.Y.
#108 J.Z. Middle Island, Inc.	White's	Route 25 & Middle Country Rd., Middle Island, N.Y.
#109 J.Z. Islip, Inc.	White's	5151 Sunrise Highway, Bohemia, L.I., N.Y.
#111 J.Z. Elmont, Inc.	Great Eastern	600 Hempstead Tpke., Elmont, N.Y. 11003
#112 J.Z. Newbridge, Inc.	Great Eastern	2425 Hempstead Tpke., East Meadow, N.Y. 11554
#113 J.Z. Little Falls, Inc.	Great Eastern	Route 46, Little Falls, N.J. 07424
#114 J.Z. Plainfield, Inc.	Great Eastern	Route 22, Plainfield, N.J. 07631
#115 J.Z. New Brunswick, Inc.	Great Eastern	Route 1, New Brunswick, N.J.
#116 J.Z. Jersey City, Inc.	Great Eastern	Route 440, Jersey City, N.J.
#117 J.Z. Union	Great Eastern	2445 Springfield Ave., Vauxhall, N.J. 07088
#118 J.Z. Middletown, Inc.	White's	350 Route 211 East, Middletown, N.Y.
#119 J.Z. Shrewsbury, Inc.	Atlantic Suporama	Route 35 & Shrewsbury Ave., New Shrewsbury, N.J.
#120 J.Z. East Brunswick, Inc.	Modell's	290 Route 18, East Brunswick, N.J. 08816
#121 J.Z. Edgewater, Inc.	Modell's	2330 Route 130, Edgewater Park, N.J. 08010
#122 J.Z. Hamilton, Inc.	Modell's	1700 Route 33 & Nottingham Way, Trenton, N.J. 08619
#123 J.Z. Syracuse, Inc.	White's	Pyramid Mall North (off Taft Rd.), North Syracuse, N.Y. 13212
#124 J.Z. Wallingford, Inc.	Daniels Home Center	No. Colony Rd., Wallingford, Conn.
#125 J.Z. Torrington, Inc.	Stars	Route 25, Torrington, Conn. 06790
#126 J.Z. Champlain, Inc.	Stars	1307 Champlin Ave., Utica, N.Y.
#127 J.Z. Rome, Inc.	Stars	Black River Blvd., Rome, N.Y.
#128 J.Z. Elmwood, Inc.	Stars	983 New Britain Ave., Elmwood, Conn.
#129 J.Z. Vestal, Inc.	Stars	Vestal Parkway, Vestal, N.Y.
#130 J.Z. Utica, Inc.	Stars	Town East Mall, Bleecker St., Utica, N.Y.
#131 J.Z. Monticello, Inc.	Stars	Monteco East Plaza, East Broadway, Monticello, N.Y.
#132 J.Z. East Haven, Inc.	Stars	Frontage Road & Kimberly Ave., East Haven, Conn.
#133 J.Z. Fulton, Inc.	White-Modells	Pyramid Mall, Route 3W, Fulton, N.Y. 13069
#134 J.Z. Oneonta, Inc.	c/o Whites-Modell	RD #2 - Rtes 7 & 28, Oneonta, N.Y. 13820
#135 J.Z. Johnstown, Inc.	c/o Whites-Modell	Pyramid Mall, RD #3, Route 30A, Johnstown, N.Y. 12095
#136 J.Z. Morris Plains	c/o Whites-Modell	Route 202 & Route 10, Morris Plains, N.J. 07950
#201 J.Z. Hempstead, Inc.	Kleins	111 Hempstead Tpke., W. Hempstead, N.Y. 11552
#205 J.Z. Yonkers, Inc.	Kleins	2500 Central Pk. Ave., Yonkers, N.Y. 10710
#206 J.Z. Long Island, Inc.	Kleins	2 Veterans Memorial Highway, Commack, N.Y. 11725
#207 J.Z. Philadelphia, Inc.	Kleins	7350 Roosevelt Blvd., Philadelphia, Pa. 19152
#208 J.Z. Greenbelt, Inc.	Kleins	6000 Greenbelt Rd., Greenbelt, Md. 20770
#210 J.Z. Woodbridge, Inc.	Kleins	675 U.S. Highway, Rte. 1, Woodbridge, N.J. 07095
#211 J.Z. Springfield, Inc.	Kleins	State & Stratford Rds., Springfield, Pa. 19064
#212 J.Z. Alexandria, Inc.	Kleins	6200 Little River Tpke., Alexandria, Va. 22304
#217 J.Z. Wayne, Inc.	Kleins	250 Rte. 46, Willowbrook, Wayne, N.J. 07470
#218 J.Z. Hicksville, Inc.	Kleins	Mid Island Shopping Center, Hicksville, N.Y. 11802
#219 J.Z. Cherry Hill, Inc.	Kleins	Cherry Hill Shopping Center, Cherry Hill, N.J.
#221 J.Z. Levittown, Inc.	Kleins	311 New Rodgers Road, Levittown, Pa. 19056
#222 J.Z. Glenolden, Inc.	Kleins	Mac Dade Blvd. & Cooke Ave., Glenolden, Pa. 19036
#223 J.Z. Brunswick, Inc.	S. Kleins	Delco Plaza Mall, Route 18, East Brunswick, N.J. 08816
#501 J.Z. Haws, Lodi Corp.	Modells	Route 17 & Essex St., Lodi, N.J. 17644
#502 J.Z. Haws, East Meadow Corp.	White's	2000 Hempstead Tpke., East Meadow, N.Y.
#503 J.Z. Haws, Commack Corp.	White's	Jericho Tpke. & Larkfield Rd., Commack, N.Y. 11725

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STORE NUMBER AND NAME
PURCHASE ORDER NUMBER

3. Invoice MUST have Original Bill of Lading attached.

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STORE NUMBER AND NAME
PURCHASE ORDER NUMBER
TOTAL CARTONS.

5. Shipments received after cancellation date will be RETURNED AT VENDOR'S EXPENSE WITHOUT NOTIFICATION.

6. Back orders and substitutions will be returned at vendor's expense unless authorized by buyer.

7. Shipments received after the 20th of the month will be deemed received the 1st of the following month..

PURCHASE ORDER NO. D 46149

DATE OF ORDER June 16, 1973

DELIVERY DATE: 1947-26-1973

CANCELLATION 17 - 8 1632

DATE Oct 2, 1975
Algeria - 2nd letter DOI

TERMS: 2-10-12:0:1:1.....DAY:

ADDITIONAL DISCOUNT

ADDITIONAL COMMENTS:

FREIGHT INSTRUCTIONS

ALL SHIPMENTS MUST BE SENT
PREPAID OR SHIPMENT WILL
BE REFUSED

FREIGHT TO BE ABSORBED BY VENDOR

FREIGHT TO BE ADDED TO INVOICE

[illegible][illegible]

	QUANTITY PER STORE	QUANTITY PER STORE	QUANTITY PER STORE	QUANTITY PER STORE
1	30,000	30,000	40,000	40,000
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VENUE COPY

DO NOT BACK ORDER • NO SUBSTITUTIONS
MDSE. SO SHIPPED WILL BE RETURNED AT VENDOR'S EXPENSE!

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#213 J.Z. Wayne, Inc.	Kleins	250 Rte. 46, Willowbrook, Wayne, N.J. 07470
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#503 J.Z. Hws. Commack Corp.	White's	Jericho Tpke. & Larkfield Rd., Commack, N.Y. 11725

August 28, 1973

J. Z. Sales Corporation
235 Express Street
Plainview, New York 11803

ATTENTION: Mr. Jack Marcus

Dear Mr. Marcus:

Enclosed please find copies of our Trademark License Agreement and also our Credit Agreement. Please sign these and return to us. We will then sign in Pittsburgh and return a copy to you for your files.

Thank you for your cooperation.

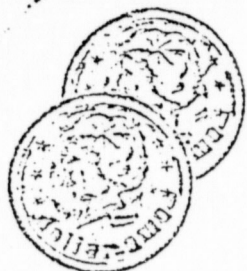
Sincerely,

DOLLAR-AMA, INC.

(Mrs.) Gayle Lindenberg
Secretary to Ronald W. Fox
Executive Vice President

CL/g

Enclosures - Trademark License Agreement
Credit Agreement



DOLLAR-AMA, INC.



ALLEGHENY INDUSTRIAL PARK 460 NIXON RD., CHESWICK, PA. 15024 - PHONE (Area Code 412) 782-4800

TERMS AND CONDITIONS OF ACCOMPANYING PURCHASE ORDER FOR
"DOLLAR-AMA" [®] PROMOTION(S), INCLUDING RELATED LICENSE TO
USE THE "DOLLAR-AMA" TRADEMARK (FEDERAL REGISTRATION 838,824)

Date: August 28, 1973

Customer: J. Z. Sales Corporation

Customer's purchase order No.: B46148, B46149

Dates and places of customer's "Dollar-Ama" promotions and related license: (see attached exhibit 1, to be updated for subsequent promotions.)

Subject to customer agreeing to Dollar-Ama's terms of credit and payment, and upon acceptance of customer's purchase order by Dollar-Ama, Inc. at its office in Pittsburgh, Pennsylvania, the following terms and conditions shall be binding upon customer and Dollar-Ama, Inc., superseding any contrary stipulations in customer's purchase order:

1. Net Prices of Merchandise: 70% of advertised retail price.
2. Advertising Preparation and Art Work: Dollar-Ama, Inc. will assist in the preparation of art work without charge.
3. Advertising Materials: Charges for printing and engraving are to be paid by customer.
4. Delivery Charges: Prepaid.
5. Related "Dollar-Ama" license: Customer shall have a royalty-free license to use the "Dollar-Ama" trademark in conformity with Dollar-Ama's "Rules for Trademark Usage" (which include standards as to the nature and quality of materials on which the mark is used).

Name of Customer J. Z. Sales Corporation.....

By..... [Signature].....

Accepted at Pittsburgh, Pa.
DOLLAR-AMA, INC.

By..... Ronald W. Roy.....

9-17-73

DOLLAR-AMA, INC.

ALLEGHENY INDUSTRIAL PARK • 460 NIXON RD., CHESWICK, PA. 15024 • PHONE (Area Code 412) 782-4800

TERMS AND CONDITIONS FOR PAYMENT OF ACCOMPANYING PURCHASE ORDER FOR DOLLAR-AMA® PROMOTION(S)

Date: August 28, 1973

Customer: J. Z. Sales Corporation

Customer's purchase order No.: B46148, B46149

Subject to customer agreeing to Dollar-Ama's terms and conditions for license to use trademark, and upon acceptance of customer's purchase order by Dollar-Ama, Inc. at its office in Pittsburgh, Pennsylvania, the following terms and conditions shall be binding upon customer and Dollar-Ama, Inc., superseding any inconsistent stipulations in customer's purchase order:

1. Payment shall be due net 35 days from date of invoice.
2. Customer's line of credit is \$600,000.00 combined total from all affiliated companies of Dollar-Ama, Inc. and including the attached purchase order. Advanced payments shall be made on account to keep customer's credit within such limit.
3. Dollar-Ama, Inc. reserves the right to withhold shipment of any merchandise should the customer's credit limit be exceeded, or should any past due amounts be owed by customer to Dollar-Ama, Inc. or any of its affiliated companies. Customer shall be given three days notice in writing or by wire that shipment must be so withheld.
4. In no event shall Dollar-Ama, Inc. incur any liability by reason of delays in shipment where such delay results from customer's payment deficiencies as set forth above, or from any other causes, not limited to the foregoing, which are beyond the control of Dollar-Ama, Inc.

Name of Customer... J. Z. Sales Corporation...

By... *Alvin [Signature]*...

Title of Officer signing... *V.P.*...

Accepted at Pittsburgh, Pa.
DOLLAR-AMA, INC.

By... *Charles W. [Signature]*...

(Name of person to be notified if shipment is
to be withheld pending payments by customer)

Phone... ()

Exhibit 1

Date: August 28, 1973

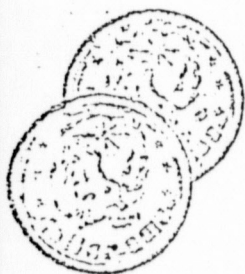
Customer: J. Z. Sales Corporation

Customer's purchase order No.: B46148, B46149

Dates and places of customer's "Dollar-Ama" promotions and related license:

The twenty-one (21) J. Z. Stores running the Dollar-ama promotion on 10/8/73.

Store #	City	State
101	Lodi	New Jersey
102	East Meadow	New York
103	Commack	New York
105	Yorktown Heights	New York
107	Massapequa	New York
108	Middle Island	New York
109	Sayville	New York
110	Middletown	New York
122	Hamilton	New Jersey
123	Syracuse	New York
125	Torrington	Connecticut
126	Utica (Champlain)	New York
127	Rome	New York
129	Vestal	New York
130	Utica (Bleeker)	New York
131	Monticello	New York
132	E. Haven	Connecticut
133	Fulton	New York
134	Unadilla	New York
135	Johnstown	New York
136	Morris Plains	New Jersey



DOLLAR-AMA, INC.



ALLEGHENY INDUSTRIAL PARK • 450 NIXON RD., CHESWICK, PA. 15024 • PHONE (Area Code 412) 782-4800

August 28, 1973

J. Z. Sales Corporation
235 Express Street
Plainview, NY 11803

ATTENTION: Mr. Jack Marcus

Dear Mr. Marcus:

We received your Purchase Orders #B46148 and #B46149 for the upcoming October 8, 1973 promotion and wanted to confirm the freight instructions. Merchandise is to be shipped prepaid and bill freight, F.O.B. our Cheswick Warehouse. Those shipments shipped via our truck will be billed at 3% of the retail value.

If you have any questions or if I can be of any further assistance, please do not hesitate to call.

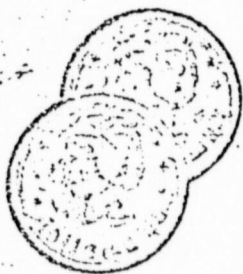
Sincerely,

DOLLAR-AMA, INC.

Michael L. Merlo
Assistant to the Vice President

KLM/kjw

cc: Sharon Sutton
Dan Wilson



DOLLAR-AMA, INC.



ALLEGHENY INDUSTRIAL PARK • 460 NIXON RD., CHESWICK, PA. 15024 • PHONE (Area Code 412) 732-4800

September 4, 1973

J.Z. Sales Corporation
235 Express Street
Plainview, New York 11803

Attention: Mr. Jack Marcus

Dear Mr. Marcus:

Per the request of Mr. Jack Gershowitz, listed below are the revised budgets for your upcoming Dollar-ama sale in October which totals \$600,000 at retail:

Store #101 - \$54,000	Store #126 - \$18,000
Store #102 - \$42,000	Store #127 - \$18,000
Store #103 - \$48,000	Store #129 - \$12,000
Store #106 - \$48,000	Store #130 - \$12,000
Store #107 - \$54,000	Store #131 - \$12,000
Store #108 - \$24,000	Store #132 - \$18,000
Store #109 - \$54,000	Store #133 - \$18,000
Store #118 - \$36,000	Store #134 - \$18,000
Store #122 - \$24,000	Store #135 - \$18,000
Store #123 - \$30,000	Store #136 - \$30,000
Store #125 - \$12,000	

If you have any questions or if I can be of any further assistance, please do not hesitate to call.

Sincerely,

DOLLAR-AMA, INC.

Jack Golla

JG/ss

cc: Jack Gershowitz

DOLLAR-AMA, INC.

ALLEGHENY INDUSTRIAL PARK • 450 NIXON RD., CHESWICK, PA. 15024 • PHONE (412) 722-4200

October 24, 1973

Mr. Al Stehr
J. Z. Sales
235 Express Street
Plainview, N.Y. 11804

Dear Al:

With reference to our recent discussion in your office, the following will serve to confirm our conversation:

As a result of your recent Dollar-Ama promotion, there is an outstanding balance owed to us of \$428,000. Upon receipt of \$228,000, we will extend the due date of the balance, \$200,000, to February 1, 1974.

Confirmation of the extension will be sent to you by Mr. Harry Thomas of our Credit Department.

If I can be of further service, please do not hesitate to call me.

Sincerely,

Jack
Jack Gershowitz
Vice President

JG/hb

cc Jack Marcus
Harry Thomas ✓

NAME J. Z. SALES CORP. NUMBER 296
ACCOUNT NO. 06-70009-0 11/30/53 19 50-870
FAY TO THE ORDER OF Robinson Inc. 550,000 00
THE SUM OF \$500,000.00 XX
DOLLARS

BANK OF SUFFOLK COUNTY

_____, N. Y.

MEMO _____

Robinson

00214 08701 006-70009 013

Pay THE UNION NATIONAL BANK
12 PITTSBURGH, PA., OR ORDER
ACTION INDUSTRIES, INC.
ACTION IMPORTS DIVISION
DGLAR-AMA DIVISION
ASSOCIATED HARDWARE SUPPLY DIVISION
ACTION HARDWARE DIVISION
ACTION INTERNATIONAL, LTD.
00-127566

NAME J. Z. SALES CORP.

297 NUMBER

ACCOUNT NO. 06-70009-0

4/21/23 19

50-870
214

PAY TO THE
ORDER OF

Williams Inc.

550000 ⁰⁰/_{XX}

THE SUM OF \$500000 00/100

DOLLARS

BANK OF SUFFOLK COUNTY

N. Y.

MEMO

S. Heller

00214 06701 06 70009 00

Pay THE UNION NATIONAL BANK

8-12 PITTSBURGH, PA. OR ORDER

ACTION INDUSTRIES, INC.

ACTION LOBECO IMPORTS DIVISION

DOLLAR-AMA DIVISION

ASSOCIATED HARDWARE SUPPLY DIVISION

ACTION HARDWARE DIVISION

ACTION INTERNATIONAL, LTD.

00-127566



ALLEGHENY INDUSTRIAL PARK • 460 NIXON RD., CHESWICK, PA. 15024 • PHONE (Area Code 412) 782-4300

December 13, 1973

J. Z. Sales Corp.
235 Express Street
New York, New York 11803

Gentlemen:

The enclosed statement of your past due account with our Dollar-Ama Division is for the net balance of \$332,448.23 for goods sold and delivered, and related freight charges, pursuant to your Purchase Order No. B 46149 (including the part covered by B 46148). Also enclosed are the invoices listed in the statement covering deliveries for the respective stores listed in your Purchase Order. (The invoice covered by the separate payment of \$14,375.70 is omitted from the statement and is not enclosed).

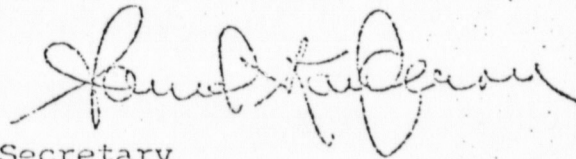
Of your November 26, 1973 payment of \$100,000 on account, we applied \$4,435.60 in payment of other charges not listed in the statement, with \$95,564.40 being shown as a credit on the enclosed statement and leaving the balance of \$332,448.23. This balance is subject to a service charge of 1% per month until paid.

We would appreciate receiving your remittance promptly as promised on November 26, 1973. If not received within 10 days, we shall institute appropriate legal action without further notice.

Copies of this letter are being sent to Messrs. Stehr and Marcus.

Very truly yours,

ACTION INDUSTRIES, INC.



Secretary

SK:as

xc: Mr. Al Stehr, General Merchandise Manager
Mr. Jack Marcus, Hardline Merchandise Manager

STATEMENT

FROM DOLLAR-AMA DIVISION OF ACTION INDUSTRIES, INC.
460 NIXON RD.
CHESWICK, PA. 15024

TO J.Z. SALES CORP.
235 EXPRESS STREET
PLAINVIEW, N.Y. 11803

DATE 11/30/73
CUSTOMER NO. 57900
PAGE NO. 1

INV. DATE	INV. NO.	YOUR STORE NO.	INV. AMOUNT	TERMS	DUE DATE	AGE CODE	TRANS CODE
09/19/73	059455	0101	7,422.22	NET	10/24/73	G	50
09/19/73	059456	0101	11,464.34	NET	10/24/73	G	50
09/20/73	059476	0101	18,620.61	NET	10/25/73	G	50
09/17/73	059369	0102	10,493.11	NET	10/22/73	G	50
09/19/73	059457	0102	20,420.87	NET	10/24/73	G	50
09/21/73	059492	0103	14,468.46	NET	10/26/73	G	50
09/20/73	059477	0103	11,076.39	NET	10/25/73	G	50
09/19/73	059458	0103	9,825.21	NET	10/24/73	G	50
09/17/73	059364	0106	11,055.37	NET	10/22/73	G	50
09/19/73	059445	0106	9,825.21	NET	10/24/73	G	50
09/20/73	059473	0107	11,847.83	NET	10/25/73	G	50
09/19/73	059447	0107	6,065.82	NET	10/24/73	G	50
09/19/73	059446	0107	21,737.11	NET	10/24/73	G	50
09/20/73	059474	0108	18,032.00	NET	10/25/73	G	50
09/19/73	059444	0109	21,737.84	NET	10/24/73	G	50
09/20/73	059472	0109	11,847.83	NET	10/25/73	G	50
09/19/73	059443	0109	6,065.82	NET	10/24/73	G	50
09/20/73	059475	0118	9,060.54	NET	10/25/73	G	50
09/19/73	059448	0118	17,676.69	NET	10/24/73	G	50
09/19/73	059449	0122	17,941.59	NET	10/24/73	G	50
09/17/73	059450	0123	7,663.85	NET	10/22/73	G	50
09/19/73	059451	0123	14,685.02	NET	10/24/73	G	50
09/21/73	059489	0125	8,960.62	NET	10/26/73	G	50
09/17/73	059367	0126	13,473.76	NET	10/22/73	G	50
09/17/73	059368	0127	13,473.93	NET	10/22/73	G	50
09/21/73	059490	0129	8,951.86	NET	10/26/73	G	50
09/21/73	059491	0130	8,986.90	NET	10/26/73	G	50
09/21/73	059493	0131	8,960.62	NET	10/26/73	G	50
09/19/73	059454	0132	13,447.65	NET	10/24/73	G	50
09/17/73	059452	0133	13,447.48	NET	10/22/73	G	50
09/17/73	059365	0134	13,491.28	NET	10/22/73	G	50
09/17/73	059366	0135	13,491.28	NET	10/22/73	G	50
09/21/73	059483	0136	13,754.23	NET	10/26/73	G	50
09/19/73	059453	0136	8,539.29	NET	10/24/73	G	50
11/30/73			95,564.40	ON ACCOUNT		A	80

AGED TOTALS - PAY OLDEST ITEMS FIRST

DATE 11/30/73
CUSTOMER NO. 57900
PAGE NO. 2

TOTALS

A - ON ACCOUNT PAYMENT	\$ 95,564.40-
G - PAST DUE - 31-60	428,012.63
* TOTAL AMOUNT DUE *	\$332,448.23

50 MERCHANDISE SALES FROM HARMAR

80 ON ACCOUNT PAYMENT

A SERVICE CHARGE OF 1% PER MONTH WILL BE ASSESSED ON ALL PAST DUE INVOICES.

1. PLEASE ACCOMPANY EACH REMITTANCE WITH A LISTING OF ALL INVOICES BEING PAID.
2. THIS STATEMENT REFLECTS ALL PAYMENTS RECEIVED AND ALL INVOICES ISSUED THRU THE END OF NOVEMBER, 1973.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74 - 1309

IN THE MATTER OF

UNISHOPS, INC.,

Debtor-Appellant

BRIEF OF ACTION INDUSTRIES,
INC., APPELLEE
AND
APPENDIX

LAW OFFICES
KAUFMAN & HARRIS
OLIVER BUILDING
PITTSBURGH, PA. 15222

